

REMARKS

This Amendment is made to the Office Action dated March 15, 2006. Claims 19-22 have been withdrawn in view of the restriction requirement issued earlier during prosecution. Claims 1 and 2 have been amended to change the word "capture" to "capturing" to maintain correct terminology in these claims. Claims 12 and 16 were amended to depend from claim 11. The amendments to these claims were not made to distinguish the presently claimed invention over the cited art. Favorable reconsideration is requested in view of the remarks presented below.

The Examiner has rejected claims 1-18 under the judicially created doctrine of obviousness-type double rejection as being unpatentable over claims 1-24 of U. S. Patent No. 6,638,294. Applicant hereby submits a Terminal Disclaimer to overcome this rejection.

Claims 12 and 16 were rejected under 35 U.S.C. 112, second paragraph. Applicant has amended these claims to depend from claim 11 which includes the recitation of an elongate tubular member. Accordingly, claims 12 and 16 should now have proper antecedent basis for this element.

The Examiner rejected claims 1-18 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,790,812 to Hawkins, Jr. et al. (the "Hawkins patent") in view of U.S. Patent No. 6,485,501 to Green (the "Green patent"). This rejection is respectfully traversed. First, with respect to the independent claim 1 and dependent claims 2-17, it is noted that the Hawkins patent is directed to a filter basket 11 which moves between an expanded and contracted position by the use of a catheter sheath 29 which holds the spring wires 28 forming the basket 11 in a contracted position until the basket 11 is ready to be deployed. The filter 11 is deployed by extending it outside the distal end of the sheath 29 which removes the restraining force on the spring wires 28, causing the spring wires 28 to spring outward. (See Column 4, lines 9-23 and Column 5, lines 2-5) Once the procedure is completed, the filter basket 11 is moved back into its stowed or contracted position by retracting it back into catheter 10. (See Column 3, 30-33) The filter basket disclosed in the Hawkins patent does not rely in any manner on the application of rotation to its struts to open or close the basket.

The Green patent also fails to disclose the use of rotation of the struts to move the basket between expanded and contracted positions. Rather, the device shown in the Green patent uses a movable core wire 131 which extends through a lumen of the guide wire to manually move the struts 120 between open and closed positions. Therefore, neither the Hawkins patent nor the Green patent discloses the rotation of the struts as the means for opening and closing the capturing device. For at least these reasons, the combination of the Hawkins patent and Green patent fails to achieve the structure recited in the present claims. Further, with respect to both independent claims 1 and 18, and dependent claims 2-17, the Hawkins patent discloses a capturing device which includes a plurality of struts attached to the inner surface of the capturing device. These struts adequately open and close the capturing device via the use of the retractable sheath. Therefore, there would be no need or reason to add more struts on the outside surface of the capturing device to help open and close the device, as suggested by the Examiner. Applicant submits that there would be no reasonable need to combine these two references in the first place and therefore for this additional reason are patentable over the cited combination. Applicant respectfully requests the Examiner to withdraw the obviousness rejections of the pending claims.

Newly added claim 23 is directed to a capturing device with a plurality of first struts attached to the inner surface of the capturing device and a plurality of second struts attached to the outside surface which assumes a self folding position through rotation of the first and second struts. Applicant submits that this new claim is patentable over the art for the same reasons addressed above with respect to claims 1-18.

The Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No. 06-2425 in connection with this paper. A duplicate copy of this paper is enclosed.

The Green patent also fails to disclose the use of rotation of the struts to move the basket between expanded and contracted positions. Rather, the device shown in the Green patent uses a movable core wire 131 which extends through a lumen of the guide wire to manually move the struts 120 between open and closed positions. Therefore, neither the Hawkins patent nor the Green patent discloses the rotation of the struts as the means for opening and closing the capturing device. For at least these reasons, the combination of the Hawkins patent and Green patent fails to achieve the structure recited in the present claims. Further, with respect to both independent claims 1 and 18, and dependent claims 2-17, the Hawkins patent discloses a capturing device which includes a plurality of struts attached to the inner surface of the capturing device. These struts adequately open and close the capturing device via the use of the retractable sheath. Therefore, there would be no need or reason to add more struts on the outside surface of the capturing device to help open and close the device, as suggested by the Examiner. Applicant submits that there would be no reasonable need to combine these two references in the first place and therefore for this additional reason are patentable over the cited combination. Applicant respectfully requests the Examiner to withdraw the obviousness rejections of the pending claims.

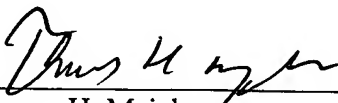
Newly added claim 23 is directed to a capturing device with a plurality of first struts attached to the inner surface of the capturing device and a plurality of second struts attached to the outside surface which assumes a self folding position through rotation of the first and second struts. Applicant submits that this new claim is patentable over the art for the same reasons addressed above with respect to claims 1-18.

The Commissioner is authorized to charge any deficiency or credit any overpayment to Deposit Account No. 06-2425 in connection with this paper. A duplicate copy of this paper is enclosed.

It is believed that all of the present claims of the application are patentable and in a condition for allowance. The undersigned attorney can be reached at 310-824-5555 to facilitate prosecution of this application, if necessary.

Respectfully submitted,
FULWIDER PATTON LEE & UTECHT, LLP

By: _____


Thomas H. Majcher
Registration No. 31,119

THM

Howard Hughes Center
6060 Center Drive, Tenth Floor
Los Angeles, CA 90045
Telephone: (310) 824-5555
Facsimile: (310) 824-9696
Customer No. 24201

129237.1